

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 10-013**

**AN ORDINANCE TO AUTHORIZE AN AGREEMENT, AS AMENDED, FOR  
ENGINEERING SERVICES WITH MALCOLM PIRNIE, INC., FOR WATER  
SYSTEM IMPROVEMENTS.**

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Rev. #1  
#3324

Sponsor:

Council  
Member  
Potter

**WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for more than a period of one year if approved by City Council by Ordinance; and

**WHEREAS**, the City desires to obtain engineering services for water system improvements; and

**WHEREAS**, the City publicly announced the requirement for such engineering services in accordance with all applicable City Charter requirements and subsequently negotiated an agreement ("the Agreement") therefor with Malcolm Pirnie, Inc. (and also with Hatch Mott MacDonald, LLC), the firm(s) ranked highest by the Architects and Engineers Review Board; and

**WHEREAS**, the term of the Agreement is for a period of three (3) years beginning upon execution hereof, at a total price not to exceed One Million Dollars (\$1,000,000.00); and

**WHEREAS**, actual expenditures will be subject to the limitations of the City's annual budgets; and

**WHEREAS**, Paragraph 2.3.1 of the Agreement has been amended to provide that the City's right to terminate the Agreement at any time for any reason whatsoever shall be "without

penalty"; and

**WHEREAS**, it is the recommendation of the Department of Public Works that the City enter into the Agreement, as amended, with Malcolm Pirnie, Inc., to obtain engineering services for water system improvements as stated above, for a period of three (3) years at a total price not to exceed One Million Dollars (\$1,000,000.00), a copy of which, in substantial form, is attached hereto and incorporated by reference as Exhibit "A."

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** The Agreement, as amended, between the City and Malcolm Pirnie, Inc., to obtain engineering services for water system improvements, a copy of which, in substantial form, is attached hereto as Exhibit "A," for a period of three years beginning upon execution hereof, at a total price not to exceed One Million Dollars (\$1,000,000.00), is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute as many copies of said agreement, as well as all additional undertakings related thereto, as may be necessary.

**SECTION 2.** This Ordinance shall be effective upon its passage by City Council and approval of the Mayor.

First Reading . . . . March 4, 2010  
Second Reading. . . . March 4, 2010  
Third Reading . . . May 6, 2010

Passed by City Council,  
May 6, 2010

Norman D. Griffiths  
President of City Council 5/6/10

ATTEST: Haci Owens  
Acting Deputy City Clerk

Approved as to form this  
21<sup>st</sup> day of April 2010

Mary P. Smith  
First Assistant City Solicitor

Approved this 18<sup>th</sup> day of

May, 2010

J. M. Baker  
Mayor

**SYNOPSIS:** Substitute No. 1 to this Ordinance authorizes the City to enter into an amended agreement with Malcolm Pirnie, Inc., to obtain engineering services for water system improvements for a period of three years at a total price not to exceed \$1,000,000.00. The amendment provides that the City's right to terminate the agreement shall be "without penalty."

## ENGINEERING SERVICES AGREEMENT

AGREEMENT made by and between the City of Wilmington (CITY), acting by and through the Department of Public Works, and Malcolm Pirnie, Inc. (ENGINEER), for professional engineering services as hereinafter specified in connection with the CITY's needs.

The engineering services to be performed under the terms of this AGREEMENT include studies and reports; designs, estimates, and preparation of construction drawings and assistance during bidding, award, and construction for water system improvements. Certain improvements have been identified, while others may result from future operational requirements. In general, they are associated with additional demands for service, opportunities to effect longer term operating economy, improved reliability, compliance with new standards, modernization, rehabilitation, and performance testing. The engineering services will be performed under the following general phases:

- Studies and reports
- Designs, plans and specifications
- Assistance during construction

The projects are applicable to any of the following:

- (a) Distribution system assessments and improvements
- (b) Filter Plant improvements in connection with new regulatory requirements and current operating needs
- (c) Pumping station improvements
- (d) Storage improvements
- (e) Water services and metering improvements
- (f) Source of supply improvements
- (g) Other projects authorized by the CITY.

The scope of the project, the services to be rendered, and the estimated charges for services will be determined before starting each assignment. Projects will be undertaken only upon authorization of the Department of Public Works after agreement as to scope and charges. It is the intention that the CITY may extend this AGREEMENT to any or all of the phases of engineering required for an authorized project.

### **SECTION 1 - SCOPE OF SERVICES**

A general description of the scope of services which may be performed upon instruction from the CITY is as follows:

#### **1.1 Studies and Reports**

- 1. Assist in the engineering aspects of applications for grant assistance.
- 2. Review available CITY records and tests of equipment performance.
- 3. Make field investigations and tests of equipment performance.

4. Select alternate plans and prepare layouts, studies and computations as bases for comparing alternatives.
5. Prepare engineer's estimates of probable construction cost.
6. Confer with CITY staff to discuss alternates, make recommendations, and assist in selecting a course of action.
7. Prepare a brief letter-type report setting forth the results of the study and submit copies for CITY records.
8. Meet with regulatory agencies or others concerning engineering aspects of the project.
9. Present the results of the study at oversight committee meetings or public hearings.

## **1.2 Designs, Plans and Specifications**

1. Obtain copies of pertinent data available in the CITY files concerning the existing facilities.
2. Perform field surveys and obtain photographs and measurements of existing conditions required for the preparation and processing of designs and construction drawings.
3. Confer with designated representatives of the Department of Public Works concerning the project to report on progress and to discuss review comments.
4. Advise concerning the need for test pits, or subsurface investigations required for the designs, and prepare specifications for obtaining such data. The CITY will award contracts.
5. Prepare designs, drawings and specifications for bidding and for construction purposes, in accordance with CITY standards, where applicable. Drawings shall be CADD generated, with originals being of reproducible quality.
6. Upon completion of designs, submit copies of final drawings and specifications for final review and approval of City, County and State agencies. Make corrections resulting from the reviews. Provide estimates of probable construction costs for CITY information.
7. Assist the CITY in the acquisition of the required permits by preparing the necessary applications and/or documentation for submission by the CITY.
8. Furnish copies of final documents and assist during the bidding period by attending a pre-bid conference and by preparing addenda to the plans and specifications as required.

## **1.3 Assistance During Construction**

1. Assist in awarding the construction contract by providing a written analysis of the completeness of the bid submissions to aid the CITY in evaluating the bids or proposals. Attend the preconstruction and progress meetings.

2. Review and approve (or take other appropriate action on) shop drawings, product data, and sample submissions by the Contractor for compliance with the intent of the contract documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
3. Furnish advice and consultation during construction.
4. If requested, provide a resident project representative and/or inspectors to observe the work done by the Contractor and inform the CITY promptly of deviations from the contract documents. The ENGINEER shall endeavor to protect the OWNER against deficiencies in the work of the Contractor, however, the ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for Contractor's safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work.
5. Make arrangements for specialized testing by qualified laboratories.
6. Review requests for monthly and final payments to the Contractor and advise the CITY.
7. Review the construction schedule submitted by the Contractor and advise the CITY.
8. Review all matters of "extra work", or additional work, or claims for additional compensation by the Contractor, and make recommendations to the CITY.
9. Prepare change orders for authorization by the CITY.
10. Make a conditional acceptance inspection of the work and prepare punch lists of items to be corrected.
11. Make a final inspection of the completed work to determine whether the Contractor has complied with the intent of the contract documents and advise the CITY.
12. Modify the original contract drawings to show significant construction changes based on records compiled by others during construction.

#### **1.4 Schedule**

The schedule for each engineering phase of each project will be estimated before starting assignments and shall be included with the authorization by the CITY to proceed.

#### **1.5 Duration**

The duration of the AGREEMENT is governed by the payment limits in Section 2.2. It is anticipated that services under this AGREEMENT will be provided over a three (3) year period beginning with the effective date of this AGREEMENT.

## **SECTION 2 - COMPENSATION AND PAYMENT**

### **2.1 Method of Payment for Services**

**2.1.1 General** -The OWNER agrees to compensate the ENGINEER for the services provided hereunder on the fee basis mutually agreed to by the parties for each Project, such as a lump sum fee as is for cases where the scope of services can be specifically defined in advance, or a rate schedule fee basis where the scope of services is not specifically definable in advance.

**2.1.2 Lump Sum** -For services provided on a lump sum fee basis, the ENGINEER will furnish the identified services for a fixed total cost with the payment(s) to be made on a schedule mutually agreed to by the parties.

Under the Lump sum basis the ENGINEER may submit invoices 1) based on a percentage of the tasks actually completed through the billing period plus all direct expenses identified below, or 2) based on the actual hours of services furnished during the billing period multiplied by the hourly rate(s) referenced below and identified as Exhibit A, plus all direct expenses.

**2.1.3 Rate Schedule** - For services provided on a rate schedule fee basis, The ENGINEER will furnish the identified services in accordance with the hourly rate schedule attached hereto and identified as Exhibit A. The hourly rate schedule will provide a detailed listing of all personnel, including their title and their corresponding hourly rate, who will be performing work for the ENGINEER under this AGREEMENT. Said hourly rates for any one individual involved may be adjusted no more than once a year.

Under the rate schedule basis the ENGINEER may submit invoices based on the actual hours of services furnished during the billing period multiplied by the hourly rate(s) referenced in Exhibit A, plus all direct expenses.

Direct expenses are those incurred by virtue of the assignment and do not include those incidental to the normal conduct of business. Direct expenses include, but are not necessarily limited to, authorized travel, subsistence, reproduction costs, computer charges, laboratory fees, equipment rental charges, special supplies, and subcontract costs. Subcontract costs only are subject to a surcharge of ten (10) percent to cover associated costs and responsibilities.

**2.1.4 Frequency** -Invoices for Services provided will be submitted on a monthly basis as the work progresses and will be based on work performed during the invoiced period. Invoices shall be formatted as described in Section 2.1.2 and 2.1.3 above. Questions regarding invoiced items or amounts shall be transmitted to the ENGINEER within forty-five (45) days of the date of invoice, or else the invoice shall be considered correct and payable. Invoices are due and payable within forty-five (45) days of their date, or the date on which questions are resolved, whichever is later.

### **2.2 Payment Limit**

**2.2.1** Payment to the ENGINEER for all services rendered in accordance with this AGREEMENT (including reimbursable expenses) during the three (3) year period shall not exceed One Million Dollars (\$1,000,000).

## 2.3 General

2.3.1 The CITY may terminate this AGREEMENT at any time for any reason whatsoever, upon two weeks written notice to the ENGINEER. If the AGREEMENT is terminated by the CITY through no fault of the ENGINEER during any phase of basic services, the ENGINEER shall be compensated on the basis of billing charges, and shall be paid for services rendered to the date of termination. <sup>without penalty,</sup>

2.3.2 In the event of such termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.

## SECTION 3 - GENERAL CONSIDERATIONS

### 3.1 Responsibility of Engineer

3.1.1 In performing professional services described in this AGREEMENT, the ENGINEER will use that degree of care and skill ordinarily exercised under similar circumstances by professional engineers in this locale. No other warranty, either expressed or implied, is made in connection with the rendering of these professional services.

3.1.2 The ENGINEER will employ registered professional engineers, duly licensed in the State of Delaware, in responsible charge of the work covered by the AGREEMENT.

3.1.3 The ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the ENGINEER any fee, commission, percentage, or any other consideration, contingent upon or resulting from the award and making of this AGREEMENT.

3.1.4 Upon the reasonable request of the CITY, the ENGINEER shall remove and/or replace any of its employees providing services in connection with this AGREEMENT.

### 3.2 Responsibility of the CITY

During the performance of the engineering services, the CITY will:

- A. Provide full information as to its requirements.
- B. Provide copies of applicable records of CITY.
- C. Provide the CITY with CADD standards to be used for each assignment at the time of authorization.
- D. Provide labor for operating the water system facilities during evaluation and measurements performed by the ENGINEER for excavating test pits and for providing access to observe equipment.
- E. Make arrangements for and accompany ENGINEER at meetings with other agents of the OWNER, its employees or other interested parties or regulatory entities.
- F. Examine documents submitted by ENGINEER and render timely decisions.
- G. Acquire the permits as required.



- H. Advertise for proposals from bidders, make awards and provide copies of documents for construction purposes.
- I. Give prompt written notice to ENGINEER whenever CITY becomes aware of any defect in the project.

### **3.3 Termination**

This AGREEMENT may be terminated by either party by five (5) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice.

### **3.4 Due Care**

Services performed by the ENGINEER under this AGREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised under similar conditions by members of the profession currently practicing under similar conditions. No other warranty, either expressed or implied, is made in connection with the rendering of these professional services

### **3.5 Estimates**

Since the ENGINEER has no control over the cost of labor and materials, or over the competitive bidding and market conditions, the estimates of probable construction costs provided for herein are to be made on the basis of its experience and qualifications. The ENGINEER does not guarantee the accuracy of such estimates as compared to the Contractor's bids or the project construction costs.

### **3.6 Indemnification and Insurance**

#### **3.6.1 Indemnification**

The ENGINEER agrees that it shall defend, indemnify and hold the CITY harmless from and against any and all claims, actions, and expenses, including reasonable attorney's fees, for injury to or loss of life or damage to or loss of use of property caused by negligent acts, errors or omissions of the ENGINEER, its employees, agents, or subcontractors in the performance of services required under this AGREEMENT.

### **3.6.2 Insurance**

The ENGINEER shall have or secure Workers' Compensation Insurance for its employees as required by prevailing laws.

The ENGINEER shall carry professional liability insurance from a company admitted to do business in the State of Delaware, for negligent acts, errors, or omissions which arise from the professional services rendered to the CITY under this AGREEMENT. This professional liability insurance shall cover the ENGINEER, his officers and employees for a minimum amount of \$1,000,000.

The ENGINEER will carry Commercial General Liability Insurance in the amount of \$1,000,000 and Property Damage Insurance coverage of \$1,000,000, or \$2,000,000 Combined Single Limit for both Bodily Injury and Property Damage, from a company or companies legally authorized to do business in the State of Delaware. The CITY shall be named as an additional insured on all such public liability coverage.

### **3.7 Successors and Assigns**

The CITY and the ENGINEER each binds himself and his partners, successors, executors, administrators, and assigns to the other party of this AGREEMENT and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this AGREEMENT, except as above, neither the CITY nor the ENGINEER shall assign, sublet, or transfer his interest in this AGREEMENT without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY.

## **SECTION 4 - SPECIAL REQUIREMENTS**

### **4.1 Taxes**

The ENGINEER agrees to pay any and all taxes, charges, and assessments lawfully assessed against the ENGINEER as individual professionals, as a partnership, or as a corporation doing business in the City of Wilmington at the time of the execution of this AGREEMENT.

### **4.2 Wage Tax**

The ENGINEER will withhold City of Wilmington wage taxes from its employees and these withheld taxes shall be paid to the City of Wilmington pursuant to the provisions of the Wilmington Wage Tax Law.

### **4.3 Delinquent Tax Clause**

The CITY shall have the right to set off against all monies due and payable under the provisions of this contract a sum representing the total amount of delinquent taxes and other amounts or debts owed the City of Wilmington by the ENGINEER. Money so set off shall be credited to the amount shown by the tax records or other documents to be delinquent or owing.

### **4.4 Business Licenses**

The ENGINEER shall obtain all required business licenses from the Department of Finance of the City of Wilmington necessary for the ENGINEER to perform under the terms of this AGREEMENT.

#### **4.5 Discrimination**

In the performance of this AGREEMENT the parties agree that they shall not discriminate or permit discrimination against any person because of age, sex, marital (mp) status, race, religion, color, or national origin.

#### **4.6 Findings Confidential**

All the drawings, plans, designs, reports, analysis, specifications, information, examinations, proposals, illustrations, copy, and other documents (the Documents) prepared, assembled or drafted by the ENGINEER under this AGREEMENT are confidential, and the ENGINEER agrees that the Documents shall not be made to anyone, without the prior written approval of the CITY. Furthermore, the Documents shall become the property of the CITY.

#### **4.7 Ownership of Documents**

The CITY acknowledges that the ENGINEER'S reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, drawings, specifications, and other documents are instruments of professional service. The reports, plans, and supporting data prepared under this AGREEMENT shall become the property of the CITY upon completion of the work. For a period of three (3) years after completion of work under this AGREEMENT, the ENGINEER agrees to furnish, at cost, and provide reasonable access to all materials retained by the ENGINEER on request of the CITY. Unless otherwise provided in this AGREEMENT, the ENGINEER shall have rights to retain copies of all such materials beyond such period.

#### **4.8 Reuse of Documents**

The ENGINEER does not represent that the documents which it has prepared are intended to be suitable for reuse by the CITY or others on extensions of this project or any other project. Any reuse without written verification or adaptation by the ENGINEER for the specific purpose intended will be at the user's sole risk.

#### **4.9 Subcontractors**

The ENGINEER shall notify the CITY in advance and in writing of the subcontractors, if any, it intends to use in connection with this AGREEMENT. The CITY shall have the right to reject the use of any such subcontractor(s) for any reason whatsoever.

#### **4.10 Notices**

Any notice which is required, or may be given in connection with this AGREEMENT, shall be addressed as follows:

The CITY

Kash Srinivasan, P.E., Commissioner

Department of Public Works

800 French St., 6<sup>th</sup> Floor

Wilmington, DE 19801

The ENGINEER

John M. McCarthy, P.E., Vice President

Malcolm Pirnie, Inc.

111 South Independence Mall East

Suite 1010

Philadelphia, PA 19106

**4.11 Independent Contractor**

The ENGINEER (and its employees and agents) is an independent contractor and not an employee or agent of the CITY.

**4.12 Oral Modifications**

This AGREEMENT may not be changed orally, but only by an agreement in writing and signed by both parties.

**4.13 Disadvantaged Business Enterprise (DBE) Participation**

The ENGINEER shall work with the CITY to maintain a suitable DBE participation program in consideration of the CITY's goals for effective DBE utilization.

**4.14 Right To Audit**

This AGREEMENT may be audited by the City Auditor or his designee in accordance with the provisions of Section 2-685 of the City Code.

**SECTION 5 - JURISDICTION**

The parties agree that any and all disputes arising out of this AGREEMENT shall be resolved in accordance with the laws of the State of Delaware. The parties further agree to submit exclusively to the jurisdiction of the courts of the State of Delaware for resolution of such disputes.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT on the dates set forth below in the CITY, Wilmington, Delaware.

Signed, Sealed and Delivered in the presence of:

CITY  
THE CITY OF WILMINGTON

ATTEST

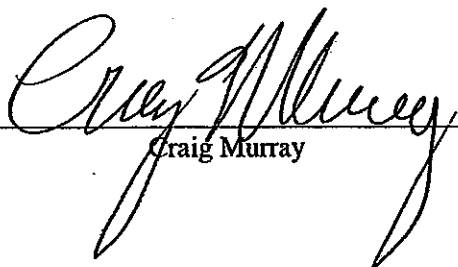
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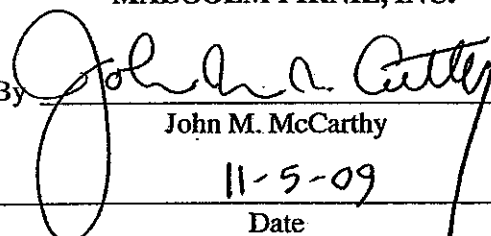
\_\_\_\_\_  
Clerk of City Council

\_\_\_\_\_  
Date

ATTEST

ENGINEER  
MALCOLM PIRNIE, INC.

  
\_\_\_\_\_  
Craig Murray

By  \_\_\_\_\_  
John M. McCarthy  
11-5-09  
\_\_\_\_\_  
Date

Approved as to form:

  
\_\_\_\_\_  
Mark Pirnie  
Assistant City Solicitor

**Exhibit A**  
**To Malcolm Pirnie's Engineering Services Agreement**

This document describes the basis for compensation and terms of payment. All rates presented apply to services rendered during the 2010 calendar period and are subject to adjustment on January 1 of each subsequent year.

In addition to these fees, clients will also be responsible for any sales or value-added taxes that may apply to engineering services performed.

**1. Hourly Rates:** Charges for services provided will be in accordance with the following schedule:

<u>Classification</u>	<u>Hourly Rate</u>
Technician 1	\$ 45
Technician 2	\$ 56
Technician 3	\$ 68
Technician 4	\$ 79
Technician 5	\$ 97
Technician 6	\$ 115
Technician 7	\$ 125
Technician 8	\$ 140
Engineer/Scientist/Architect 1	\$ 81
Engineer/Scientist/Architect 2	\$ 99
Engineer/Scientist/Architect 3	\$ 112
Project Engineer/Scientist/Architect 4	\$ 130
Project Engineer/Scientist/Architect 5	\$ 152
Sr. Project Engineer/Scientist/Architect 6	\$ 179
Associate	\$ 199
Senior Associate	\$ 219
Officer	\$ 232
Analyst/M1	\$99
Consultant/M2	\$130
Senior Consultant/M3	\$179

Overtime - No overtime premium is charged for project work outside of normal working hours.

**2. Other Direct Costs:** All direct expenses and in-house expenses will be billed in accordance with the Engineering Services Agreement.

- ☐ Computers           \$4.22 per labor hour
- ☐ Reproduction       \$0.84 per labor hour
- ☐ Transportation      \$0.56 per mile
- ☐ Laboratory           Unit prices for sample testing, handling, and storage are available for individual assignments
- ☐ Equipment           A schedule of usage rates for specialty equipment is available for field assignments

Rev. #1  
Agenda #3324

**IMPACT STATEMENT**

Substitute No. 1 to this Ordinance authorizes the City to enter into an amended agreement with Malcolm Pirnie, Inc., to obtain engineering services for water system improvements for a period of three years at a total price not to exceed \$1,000,000.00. The amendment provides that the City's right to terminate the agreement shall be "without penalty."